

STATE PROCUREMENT OFFICE

SUMMARY OF HRS CHAPTER 103D

HAWAII PUBLIC PROCUREMENT CODE

BACKGROUND

HRS Chapter 103D is based on the Model Procurement Code for State and local Governments which was drafted under the auspices of the American Bar Association by attorneys and state and local purchasing officials.

APPLICABILITY

HRS Chapter 103D applies to all procurement contracts made by governmental bodies of the state and counties whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, any of which the State receives or is owed; except for specific types of procurements which are exempt by law or administrative rule.

Reference: HRS §103D-102 and HAR chapter 3-120.

ORGANIZATION

Chief Procurement Officers. Public procurement in Hawaii for the most part is decentralized. The procurement function is carried out by 20 Chief Procurement Officers (CPOs). The CPOs are located throughout the state, serving the Executive, Legislative and Judiciary branches of government, including county governments, the Department of Education, University of Hawaii, Hawaii Health Systems Corporation, and the Office of Hawaiian Affairs.

Procurement Policy Board. A seven member autonomous board serves as the rule making body for all procurement law. There is no direct reporting or oversight relationship between the Procurement Policy Board and the Chief Procurement Officers.

State Procurement Office and the Administrator. The State Procurement Office (SPO) is administratively attached to the Department of Accounting and General Services. The Administrator of the SPO is responsible for assisting and advising governmental bodies in matters relating to the procurement process. The SPO serves as the central point for the distribution of procurement circulars, guidance, and directives to all jurisdictions. The SPO and the Administrator provide support to the Procurement Policy Board. The Administrator also serves as one of the CPOs with the responsibility for all executive branch procurements, except for the Department of Education, University of Hawaii, Hawaii Health Systems Corporation and the Office of Hawaiian Affairs.

METHODS OF SOURCE SELECTION

Small Purchases. A small purchase procurement is for an expenditure under \$50,000. Small purchases shall not be parceled by dividing the purchase of same, like or related items of goods, services, or construction, during any twelve-month period, so as to evade the statutory competitive source selection requirements.

Purchases between \$15,000 to under \$50,000 shall be conducted on the Hawaii Electronic Procurement System (HePS) for Executive departments. All other jurisdictions, for purchases between \$25,000 to under \$50,000, shall be conducted on an electronic system.

Competitive Sealed Bidding. Unless otherwise provided by law and administrative rules, contracts \$50,000 or more for goods, services, or construction shall be made pursuant to the competitive sealed bidding process. Competitive sealed bidding includes the issuance of a written invitation for bids containing the scope of work, purchase description, specifications, and the contractual terms and conditions applicable to the procurement. Award is made to the lowest responsive and responsible offeror.

Competitive Sealed Proposal. The competitive sealed proposal process or a request for proposal is used when it is not practicable or not advantageous to use competitive bidding for contracts \$50,000 or more. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- (1) Whether the primary consideration in determining award is not price;
- (2) The scope of work or specifications can not be sufficiently described in the invitation for bid;
- (3) Whether discussions about the price or technical aspects of the proposals may be required; and
- (4) Whether offerors may need the opportunity to revise their proposals.

After award, debriefing of non-selected offeror(s) to be held, upon written request by an offeror.

Sole Source Procurement. A sole source procurement is authorized when there is only one source available for the goods, services, or construction. To justify a sole source purchase it must be established that:

- (1) The good, service, or construction has a unique feature, characteristic, or capability;
- (2) The unique feature, characteristic, or capability is essential in order for the agency to accomplish its work; and
- (3) The particular good, service, or construction is available from only one source.

Sole source purchases \$50,000 or more require CPO approval; purchases less than \$50,000 may be delegated to the Head of the Purchasing Agency.

Professional Services. Professional services are generally procured through HRS §103D-304 process that requires a purchasing agency to develop a list of individuals who have been qualified through the agency's review committee to perform an anticipated professional service for the agency. When the need for the professional services arises, the agency then establishes a selection committee who provide the head of the purchasing agency with the names of a minimum of three persons, in ranked order, determined to be the most qualified. The head of the purchasing agency shall negotiate a contract beginning with the first ranked person. If a contract can not be negotiated with the first group of names, then the selection committee may be asked to submit a minimum of three additional names. After award, debriefing of non-selected offeror(s) to be held, upon written request by offeror.

Emergency Procurement. An emergency condition means a situation, which creates a threat to public health, welfare, or safety. This procurement process applies to all emergency procurement expenditures for goods, services, or construction, and may be utilized only to purchase that which is necessary to cover the emergency.

Emergency purchases \$50,000 or more require CPO approval; purchases less than \$50,000 may be delegated to the Head of the Purchasing Agency.

EXEMPTIONS

An agency may request an exemption from procurement from their respective CPO when it is determined that none of the six methods of source selection is able to meet their needs, and it is not advantageous or not practicable to competitively procure the goods, services, or construction.

Reference: HRS §103D-102 and HAR Chapter 3-120

PREFERENCES

Procurement statutes and rules allow seven preferences for offerors of goods, services, or construction. These preferences are:

- (1) Hawaii Products Preference;
- (2) Printing, Binding, and Stationery Work Preference;
- (3) Reciprocal Preference;
- (4) Recycled Preference;
- (5) Software Development Business Preference;
- (6) Tax Preference; and
- (7) Qualified Community Rehabilitation Programs.